

**Introduced by Senator Wright**

February 27, 2009

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An act to amend Sections 380, 399.12, 399.14, 454.6, 2842, and 8341 of, and to amend and renumber Sections 454.5, 454.55, 454.56, and 635 of, the Public Utilities Code, relating to energy.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 805, as introduced, Wright. Energy: procurement.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. The existing Public Utilities Act requires the commission to review and adopt a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives. The elements, among other things, require that the plan include a showing that the electrical corporation will, in order to fulfill its unmet resource needs, until a 20% renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1% per year of the electricity sold by the electrical corporation is generated from eligible renewable energy resources, provided sufficient funds are made available to cover certain above-market costs.

This bill would move the requirements for the commission to review and adopt a procurement plan for each electrical corporation from an article concerning rates to an article concerning long-term plans and procurement plans, and make conforming changes that reference existing law. The bill would require that an electrical corporation's proposed procurement plan include a showing that the electrical corporation will, in order to fulfill its unmet resource needs, procure resources from eligible renewable energy resources in an amount sufficient to meet its

procurement requirements pursuant to the renewables portfolio standard established pursuant to the California Renewables Portfolio Standard Program.

Existing law requires the commission, in consultation with the State Energy Resources Conservation and Development Commission (Energy Commission), to identify all potentially achievable cost-effective electricity efficiency savings and to establish efficiency targets for electrical corporations to achieve pursuant to their procurement plan. Existing law requires the commission, in consultation with the Energy Commission to identify all potentially achievable cost-effective natural gas efficiency savings and to establish efficiency targets for a gas corporation to achieve and requires a gas corporation to first meet its unmet resource needs through all available natural gas efficiency and demand reduction resources that are cost effective, reliable, and feasible.

This bill would move these requirements from an article concerning rates to an article concerning long-term plans and procurement plans.

(2) The California Renewables Portfolio Standard Program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). The renewables portfolio standard requires each retail seller to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010. The program requires the commission to review and adopt a renewable energy procurement plan for each electrical corporation. The program requires the commission, by rulemaking, to adopt a process that provides criteria for the rank ordering and selection of least-cost and best-fit eligible renewable energy resources to comply with the renewables portfolio standard on a total cost basis.

This bill would additionally require that the process consider the cost impacts of procuring the eligible renewable energy resources on the electrical corporation's procurement plan, the effects upon electrical system reliability, and the environmental and economic benefits of procuring renewable energy.

The program requires the commission, by rulemaking to adopt flexible rules for compliance that apply to all years, including years before and after the retail supplier procures at least 20% of total retail sales of electricity from eligible renewable energy resources.

This bill would require the commission, by rulemaking to adopt flexible rules for compliance that apply to all years before and after a retail seller procures at least 20% by December 31, 2010, and 33% by December 31, 2020, of total retail sales of electricity from eligible renewable energy resources. The bill would authorize a retail seller to meet up to 25% of its renewables portfolio standard procurement requirements with unbundled renewable energy credits, as defined, from eligible renewable energy resources within the region of the WECC, as defined. The bill would require a retail seller to annually report certain information to the commission relative to compliance with the renewables portfolio standard.

Existing law requires the commission to review the results of an eligible renewable energy resources solicitation submitted for approval by an electrical corporation and to accept or reject proposed contracts based on consistency with the approved plan.

This bill would require the commission to additionally establish project development milestones to evaluate the potential for compliance with the adopted plan and a set of actions that will occur as a result of not meeting those milestones. The bill would require the commission, in consultation with the Energy Commission, to adopt rules for the enforcement of the program with respect to retail sellers. The bill would provide that if the commission determines that despite good faith best efforts by a retail seller to procure eligible renewable energy resources, that there are insufficient eligible renewable energy resources at competitive prices to enable the retail seller to meet its renewables portfolio standard procurement requirements, the retail seller is not out of compliance with the renewables portfolio standard.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because certain of the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 380 of the Public Utilities Code is  
2 amended to read:

3 380. (a) The commission, in consultation with the Independent  
4 System Operator, shall establish resource adequacy requirements  
5 for all load-serving entities.

6 (b) In establishing resource adequacy requirements, the  
7 commission shall achieve all of the following objectives:

8 (1) Facilitate development of new generating capacity and  
9 retention of existing generating capacity that is economic and  
10 needed.

11 (2) Equitably allocate the cost of generating capacity and prevent  
12 shifting of costs between customer classes.

13 (3) Minimize enforcement requirements and costs.

14 (c) Each load-serving entity shall maintain physical generating  
15 capacity adequate to meet its load requirements, including, but not  
16 limited to, peak demand and planning and operating reserves. The  
17 generating capacity shall be deliverable to locations and at times  
18 as may be necessary to provide reliable electric service.

19 (d) Each load-serving entity shall, at a minimum, meet the most  
20 recent minimum planning reserve and reliability criteria approved  
21 by the Board of Trustees of the Western Systems Coordinating  
22 Council or the Western Electricity Coordinating Council.

23 (e) The commission shall implement and enforce the resource  
24 adequacy requirements established in accordance with this section  
25 in a nondiscriminatory manner. Each load-serving entity shall be  
26 subject to the same requirements for resource adequacy and the  
27 renewables portfolio standard program that are applicable to  
28 electrical corporations pursuant to this section, or otherwise  
29 required by law, or by order or decision of the commission. The

1 commission shall exercise its enforcement powers to ensure  
2 compliance by all load-serving entities.

3 (f) The commission shall require sufficient information,  
4 including, but not limited to, anticipated load, actual load, and  
5 measures undertaken by a load-serving entity to ensure resource  
6 adequacy, to be reported to enable the commission to determine  
7 compliance with the resource adequacy requirements established  
8 by the commission.

9 (g) An electrical corporation's costs of meeting resource  
10 adequacy requirements, including, but not limited to, the costs  
11 associated with system reliability and local area reliability, that  
12 are determined to be reasonable by the commission, or are  
13 otherwise recoverable under a procurement plan approved by the  
14 commission pursuant to ~~Section 454.5~~ *Article 9 (commencing with*  
15 *Section 635) of Chapter 3*, shall be fully recoverable from those  
16 customers on whose behalf the costs are incurred, as determined  
17 by the commission, at the time the commitment to incur the cost  
18 is made or thereafter, on a fully nonbypassable basis, as determined  
19 by the commission. The commission shall exclude any amounts  
20 authorized to be recovered pursuant to Section 366.2 when  
21 authorizing the amount of costs to be recovered from customers  
22 of a community choice aggregator or from customers that purchase  
23 electricity through a direct transaction pursuant to this subdivision.

24 (h) The commission shall determine and authorize the most  
25 efficient and equitable means for achieving all of the following:

- 26 (1) Meeting the objectives of this section.  
27 (2) Ensuring that investment is made in new generating capacity.  
28 (3) Ensuring that existing generating capacity that is economic  
29 is retained.  
30 (4) Ensuring that the cost of generating capacity is allocated  
31 equitably.

32 (i) In making the determination pursuant to subdivision (h), the  
33 commission may consider a centralized resource adequacy  
34 mechanism among other options.

35 (j) For purposes of this section, "load-serving entity" means an  
36 electrical corporation, electric service provider, or community  
37 choice aggregator. "Load-serving entity" does not include any of  
38 the following:

- 39 (1) A local publicly owned electric utility.

(2) The State Water Resources Development System commonly known as the State Water Project.

(3) Customer generation located on the customer's site or providing electric service through arrangements authorized by Section 218, if the customer generation, or the load it serves, meets one of the following criteria:

(A) It takes standby service from the electrical corporation on a commission-approved rate schedule that provides for adequate backup planning and operating reserves for the standby customer class.

(B) It is not physically interconnected to the electric transmission or distribution grid, so that, if the customer generation fails, backup electricity is not supplied from the electricity grid.

(C) There is physical assurance that the load served by the customer generation will be curtailed concurrently and commensurately with an outage of the customer generation.

SEC. 2. Section 399.12 of the Public Utilities Code is amended to read:

399.12. For purposes of this article, the following terms have the following meanings:

(a) "Conduit hydroelectric facility" means a facility for the generation of electricity that uses only the hydroelectric potential of an existing pipe, ditch, flume, siphon, tunnel, canal, or other manmade conduit that is operated to distribute water for a beneficial use.

(b) "Delivered" and "delivery" have the same meaning as provided in subdivision (a) of Section 25741 of the Public Resources Code.

(c) "Eligible renewable energy resource" means an electric generating facility that meets the definition of "in-state renewable electricity generation facility" in Section 25741 of the Public Resources Code, subject to the following ~~limitations~~:

(1) (A) An existing small hydroelectric generation facility of 30 megawatts or less shall be eligible only if a retail seller or local publicly owned electric utility owned or procured the electricity from the facility as of December 31, 2005. A new hydroelectric facility is not an eligible renewable energy resource if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(B) Notwithstanding subparagraph (A), a conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource. A conduit hydroelectric facility of 30 megawatts or less that commences operation after December 31, 2005, is an eligible renewable energy resource so long as it does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(2) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable resource unless it is located in Stanislaus County and was operational prior to September 26, 1996.

(d) “Procure” means that a retail seller or local publicly owned electric utility receives delivered electricity generated by an eligible renewable energy resource that it owns or for which it has entered into an electricity purchase agreement. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller’s obligation to comply with this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.

~~(e) “Renewables portfolio standard” means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.~~

~~(f)~~

(e) (1) “Renewable energy credit” means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, issued through the accounting system established by the Energy Commission pursuant to Section 399.13, that one unit of electricity was generated and delivered by an eligible renewable energy resource.

(2) “Renewable energy credit” includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, except for an emissions reduction credit issued pursuant to Section 40709 of the Health and Safety Code and any credits or payments associated

1 with the reduction of solid waste and treatment benefits created  
2 by the utilization of biomass or biogas fuels.

3 (3) No electricity generated by an eligible renewable energy  
4 resource attributable to the use of nonrenewable fuels, beyond a  
5 de minimis quantity, as determined by the Energy Commission,  
6 shall result in the creation of a renewable energy credit.

7 (f) *“Renewable energy public goods charge” means that portion*  
8 *of the nonbypassable system benefits charge required to be*  
9 *collected to fund renewable energy pursuant to the Reliable*  
10 *Electric Service Investments Act (Article 15 (commencing with*  
11 *Section 399) of Division 1 for an electrical corporation and*  
12 *pursuant to Section 385 for a local publicly owned electric utility.*

13 (g) *“Renewables portfolio standard” means the specified*  
14 *percentage of electricity generated by eligible renewable energy*  
15 *resources that a retail seller or a local publicly owned electric*  
16 *utility is required to procure pursuant to this article.*

17 ~~(g)~~

18 (h) *“Retail seller” means an entity engaged in the retail sale of*  
19 *electricity to end-use customers located within the state, including*  
20 *any of the following:*

21 (1) An electrical corporation, as defined in Section 218.

22 (2) A community choice aggregator. The commission shall  
23 institute a rulemaking to determine the manner in which a  
24 community choice aggregator will participate in the renewables  
25 portfolio standard program subject to the same terms and conditions  
26 applicable to an electrical corporation.

27 (3) An electric service provider, ~~as defined in Section 218.3,~~  
28 for all sales of electricity to customers beginning January 1, 2006.  
29 The commission shall institute a rulemaking to determine the  
30 manner in which electric service providers will participate in the  
31 renewables portfolio standard program. The electric service  
32 provider shall be subject to the same terms and conditions  
33 applicable to an electrical corporation pursuant to this article.  
34 Nothing in this paragraph shall impair a contract entered into  
35 between an electric service provider and a retail customer prior to  
36 the suspension of direct access by the commission pursuant to  
37 Section 80110 of the Water Code.

38 (4) *“Retail seller” does not include any of the following:*

1 (A) A corporation or person employing cogeneration technology  
2 or producing electricity consistent with subdivision (b) of Section  
3 218.

4 (B) The Department of Water Resources acting in its capacity  
5 pursuant to Division 27 (commencing with Section 80000) of the  
6 Water Code.

7 (C) A local publicly owned electric utility.

8 (i) “WECC” means the Western Electricity Coordinating  
9 Council of the North American Electric Reliability Council, or a  
10 successor entity to either council.

11 SEC. 3. Section 399.14 of the Public Utilities Code is amended  
12 to read:

13 399.14. (a) (1) The commission shall direct each electrical  
14 corporation to prepare a renewable energy procurement plan that  
15 includes the matter in paragraph (3), to satisfy its obligations under  
16 the renewables portfolio standard. To the extent feasible, this  
17 procurement plan shall be proposed, reviewed, and adopted by the  
18 commission as part of, and pursuant to, a general procurement  
19 plan process. The commission shall require each electrical  
20 corporation to review and update its renewable energy procurement  
21 plan as it determines to be necessary.

22 (2) The commission shall adopt, by rulemaking, all of the  
23 following:

24 (A) A process for determining market prices pursuant to  
25 subdivision (c) of Section 399.15. The commission shall make  
26 specific determinations of market prices after the closing date of  
27 a competitive solicitation conducted by an electrical corporation  
28 for eligible renewable energy resources.

29 (B) A process that provides criteria for the rank ordering and  
30 selection of least-cost and best-fit eligible renewable energy  
31 resources to comply with the annual California Renewables  
32 Portfolio Standard Program obligations on a total cost basis. This  
33 process shall consider estimates of indirect costs associated with  
34 needed transmission investments and ongoing utility expenses  
35 resulting from integrating and operating eligible renewable energy  
36 resources. *This process shall also consider the cost impacts of*  
37 *procuring the eligible renewable energy resources on the electrical*  
38 *corporation’s electricity procurement plan adopted pursuant to*  
39 *Article 9 (commencing with Section 635) of Chapter 3, the effects*

1 *upon electrical system reliability, and the environmental and*  
2 *economic benefits of procuring renewable energy.*

3 (C) (i) Flexible rules for compliance, including rules permitting  
4 retail sellers to apply excess procurement in one year to subsequent  
5 years or inadequate procurement in one year to no more than the  
6 following three years. The flexible rules for compliance shall apply  
7 to all years, including years before and after a retail seller procures  
8 at least 20 percent *by December 31, 2010, and 33 percent by*  
9 *December 31, 2020*, of total retail sales of electricity from eligible  
10 renewable energy resources. *If the commission determines that*  
11 *despite good faith best efforts by a retail seller to procure eligible*  
12 *renewable energy resources, that there are insufficient eligible*  
13 *renewable energy resources at competitive prices to enable the*  
14 *retail seller to meet its renewables portfolio standard procurement*  
15 *requirements, the retail seller shall not be out of compliance with*  
16 *the requirements of this article.*

17 (ii) The flexible rules for compliance shall address situations  
18 where, as a result of insufficient transmission, a retail seller is  
19 unable to procure eligible renewable energy resources sufficient  
20 to satisfy the requirements of this article. Any rules addressing  
21 insufficient transmission shall require a finding by the commission  
22 that the retail seller has undertaken all reasonable efforts to do all  
23 of the following:

24 (I) Utilize flexible delivery points.

25 (II) Ensure the availability of any needed transmission capacity.

26 (III) If the retail seller is an electric corporation, to construct  
27 needed transmission facilities.

28 (IV) Nothing in this subparagraph shall be construed to revise  
29 any portion of ~~Section 454.5~~ Article 9 (*commencing with Section*  
30 *635*) of Chapter 3.

31 (iii) *The flexible compliance rules shall require each retail seller*  
32 *to annually report to the commission on the retail seller's*  
33 *compliance with the renewables portfolio standard, including all*  
34 *of the following:*

35 (I) *The total kilowatthours procured by the retail seller from*  
36 *eligible renewable energy resources located in the state, identified*  
37 *by source.*

38 (II) *The total kilowatthours procured by the retail seller from*  
39 *eligible renewable energy resources located outside the state, but*  
40 *within the region of the WECC, identified by source.*

1     ~~(III) The total kilowatthours represented by unbundled~~  
2     ~~renewable energy credits procured by the retail seller from eligible~~  
3     ~~renewable energy resources located in the state, identified by~~  
4     ~~source.~~

5     ~~(IV) The total kilowatthours represented by unbundled~~  
6     ~~renewable energy credits procured by the retail seller from eligible~~  
7     ~~renewable energy resources located outside the state, but within~~  
8     ~~the region of the WECC, identified by source.~~

9     (D) Standard terms and conditions to be used by all electrical  
10    corporations in contracting for eligible renewable energy resources,  
11    including performance requirements for renewable generators. A  
12    contract for the purchase of electricity generated by an eligible  
13    renewable energy resource shall, at a minimum, include the  
14    renewable energy credits associated with all electricity generation  
15    specified under the contract. The standard terms and conditions  
16    shall include the requirement that, no later than six months after  
17    the commission's approval of an electricity purchase agreement  
18    entered into pursuant to this article, the following information  
19    about the agreement shall be disclosed by the commission: party  
20    names, resource type, project location, and project capacity.

21    (3) Consistent with the goal of ~~procuring the least-cost and~~  
22    ~~best-fit~~ *increasing California's reliance on* eligible renewable  
23    energy resources, the renewable energy procurement plan submitted  
24    by an electrical corporation shall include all of the following:

25    (A) An assessment of annual or multiyear portfolio supplies  
26    and demand to determine the optimal mix of eligible renewable  
27    energy resources with deliverability characteristics that may include  
28    peaking, dispatchable, baseload, firm, and as-available capacity.  
29    *This assessment shall be consistent with the electrical corporation's*  
30    *long-term portfolio planning conducted pursuant to Article 9*  
31    *(commencing with Section 635) of Chapter 3, and shall consider*  
32    *the electrical corporation's optimal portfolio to reach the state's*  
33    *goals for reducing emissions of greenhouse gases. The assessment*  
34    *shall include an estimate of the net reduction in emissions of*  
35    *greenhouse gases on a per kilowatthour basis and the costs*  
36    *associated with that reduction, separately computed for each*  
37    *renewable technology. Consistent with an electrical corporation's*  
38    *long-term portfolio planning, the commission may require analyses,*  
39    *including, but not limited to, the rate impact, effects on system*

1 *reliability, and the environmental and economic benefits of the*  
2 *proposed procurement.*

3 ~~(B) Provisions~~ *Strategies* for employing available compliance  
4 flexibility mechanisms established by the commission.

5 (C) A bid solicitation setting forth the need for eligible  
6 renewable energy resources of each deliverability characteristic,  
7 required online dates, and locational preferences, if any.

8 *(D) A status update on the development schedule of all eligible*  
9 *renewable resources currently under contract.*

10 (4) In soliciting and procuring eligible renewable energy  
11 resources, each electrical corporation shall offer contracts of no  
12 less than 10 years in duration, unless the commission approves of  
13 a contract of shorter duration. *A retail seller may meet up to 25*  
14 *percent of its renewables portfolio standard procurement*  
15 *requirements with unbundled renewable energy credits from*  
16 *eligible renewable energy resources within the region of the*  
17 *WECC.*

18 ~~(5) In soliciting and procuring eligible renewable energy~~  
19 ~~resources, each electrical corporation may give preference to~~  
20 ~~projects that provide tangible demonstrable benefits to communities~~  
21 ~~with a plurality of minority or low-income populations.~~

22 (5) (A) *In soliciting and procuring eligible renewable energy*  
23 *resources for California-based projects, each electrical*  
24 *corporation shall give preference to renewable energy projects*  
25 *that provide environmental and economic benefits to communities*  
26 *afflicted with poverty or high unemployment, or that suffer from*  
27 *high emission levels of toxic air contaminants, criteria air*  
28 *pollutants, and greenhouse gases.*

29 (B) *The commission shall report to the Legislature by January*  
30 *1, 2012, and every two years thereafter, on the progress and status*  
31 *of procurement activities, the identification of barriers, and policy*  
32 *recommendations for achieving the goals set forth in this*  
33 *paragraph.*

34 (b) *A retail seller may enter into a combination of long- and*  
35 *short-term contracts for delivery of electricity and associated*  
36 *renewable energy credits.* The commission may authorize a retail  
37 seller to enter into a contract of less than 10 years' duration with  
38 an eligible renewable energy resource, if the commission has  
39 established, for each retail seller, minimum quantities of eligible  
40 renewable energy resources to be procured either through contracts

1 of at least 10 years' duration or from new facilities commencing  
2 commercial operations on or after January 1, 2005. *A retail seller*  
3 *may meet up to 25 percent of its renewables portfolio standard*  
4 *procurement requirements with unbundled renewable energy*  
5 *credits from eligible renewable energy resources within the region*  
6 *of the WECC.*

7 (c) The commission shall review and accept, modify, or reject  
8 each electrical corporation's renewable energy procurement plan  
9 prior to the commencement of renewable procurement pursuant  
10 to this article by an electrical corporation.

11 (d) (1) The commission shall review the results of an eligible  
12 renewable energy resources solicitation submitted for approval by  
13 an electrical corporation and accept or reject proposed contracts  
14 with eligible renewable energy resources based on consistency  
15 with the approved renewable energy procurement plan. If the  
16 commission determines that the bid prices are elevated due to a  
17 lack of effective competition among the bidders, the commission  
18 shall direct the electrical corporation to renegotiate the contracts  
19 or conduct a new solicitation.

20 ~~(e) If an electrical corporation fails to comply with a commission~~  
21 ~~order adopting a renewable energy procurement plan, the~~  
22 ~~commission shall exercise its authority pursuant to Section 2113~~  
23 ~~to require compliance. The commission shall enforce comparable~~  
24 ~~penalties on any other retail seller that fails to meet annual~~  
25 ~~procurement targets established pursuant to Section 399.15.~~

26 (2) *The commission shall establish project development*  
27 *milestones to evaluate the potential for compliance with the*  
28 *adopted renewable procurement plan and a set of actions that will*  
29 *occur as a result of not meeting those milestones. These actions*  
30 *may include, but shall not be limited to, determining a cure period*  
31 *for failure to meet milestones, a suspense period on the contract*  
32 *online date for events beyond the developer's control that cause*  
33 *a failure to meet milestones, allow other developers that are*  
34 *prepared to go forward to move ahead of suspended contracts,*  
35 *and forfeiture of deposits.*

36 (e) *The commission, in consultation with the State Air Resources*  
37 *Board, shall adopt rules for the enforcement of this article with*  
38 *respect to retail sellers. The rules shall be adopted at a publicly*  
39 *noticed meeting offering all interested parties an opportunity to*  
40 *comment. Not less than 30 days' notice shall be given to the public*

1 *of any meeting held for purposes of adopting the rules. Not less*  
2 *than 10 days' notice shall be given to the public before any meeting*  
3 *is held to make a substantive change to the rules.*

4 (f) (1) The commission may authorize a procurement entity to  
5 enter into contracts on behalf of customers of a retail seller for  
6 deliveries of eligible renewable energy resources to satisfy annual  
7 renewables portfolio standard obligations. The commission may  
8 not require any person or corporation to act as a procurement entity  
9 or require any party to purchase eligible renewable energy  
10 resources from a procurement entity.

11 (2) Subject to review and approval by the commission, the  
12 procurement entity shall be permitted to recover reasonable  
13 administrative and procurement costs through the retail rates of  
14 end-use customers that are served by the procurement entity and  
15 are directly benefiting from the procurement of eligible renewable  
16 energy resources.

17 (g) Procurement and administrative costs associated with  
18 long-term contracts entered into by an electrical corporation for  
19 eligible renewable energy resources pursuant to this article and  
20 approved by the commission shall be deemed reasonable per se,  
21 and shall be recoverable in rates.

22 (h) Construction, alteration, demolition, installation, and repair  
23 work on an eligible renewable energy resource that receives  
24 production incentives pursuant to Section 25742 of the Public  
25 Resources Code, including work performed to qualify, receive, or  
26 maintain production incentives is "public works" for the purposes  
27 of Chapter 1 (commencing with Section 1720) of Part 7 of Division  
28 2 of the Labor Code.

29 SEC. 4. Section 454.5 of the Public Utilities Code is amended  
30 and renumbered to read:

31 ~~454.5.~~

32 635. (a) The commission shall specify the allocation of  
33 electricity, including quantity, characteristics, and duration of  
34 electricity delivery, that the Department of Water Resources shall  
35 provide under its power purchase agreements to the customers of  
36 each electrical corporation, which shall be reflected in the electrical  
37 corporation's proposed procurement plan. Each electrical  
38 corporation shall file a proposed procurement plan with the  
39 commission not later than 60 days after the commission specifies  
40 the allocation of electricity. The proposed procurement plan shall

1 specify the date that the electrical corporation intends to resume  
2 procurement of electricity for its retail customers, consistent with  
3 its obligation to serve. After the commission's adoption of a  
4 procurement plan, the commission shall allow not less than 60  
5 days before the electrical corporation resumes procurement  
6 pursuant to this section.

7 (b) An electrical corporation's proposed procurement plan shall  
8 include, but not be limited to, all of the following:

9 (1) An assessment of the price risk associated with the electrical  
10 corporation's portfolio, including any utility-retained generation,  
11 existing power purchase and exchange contracts, and proposed  
12 contracts or purchases under which an electrical corporation will  
13 procure electricity, electricity demand reductions, and  
14 electricity-related products and the remaining open position to be  
15 served by spot market transactions.

16 (2) A definition of each electricity product, electricity-related  
17 product, and procurement related financial product, including  
18 support and justification for the product type and amount to be  
19 procured under the plan.

20 (3) The duration of the plan.

21 (4) The duration, timing, and range of quantities of each product  
22 to be procured.

23 (5) A competitive procurement process under which the  
24 electrical corporation may request bids for procurement-related  
25 services, including the format and criteria of that procurement  
26 process.

27 (6) An incentive mechanism, if any incentive mechanism is  
28 proposed, including the type of transactions to be covered by that  
29 mechanism, their respective procurement benchmarks, and other  
30 parameters needed to determine the sharing of risks and benefits.

31 (7) The upfront standards and criteria by which the acceptability  
32 and eligibility for rate recovery of a proposed procurement  
33 transaction will be known by the electrical corporation prior to  
34 execution of the transaction. This shall include an expedited  
35 approval process for the commission's review of proposed contracts  
36 and subsequent approval or rejection thereof. The electrical  
37 corporation shall propose alternative procurement choices in the  
38 event a contract is rejected.

39 (8) Procedures for updating the procurement plan.

(9) A showing that the procurement plan will achieve the following:

(A) The electrical corporation will, in order to fulfill its unmet resource needs and in furtherance of Section 701.3, until a 20 percent renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1 percent per year of the electricity sold by the electrical corporation is generated from renewable energy resources, provided sufficient funds are made available pursuant to Sections 399.6 and 399.15, to cover the above-market costs for new renewable energy resources needs, procure resources from eligible renewable energy resources in an amount sufficient to meet its procurement requirements pursuant to the renewables portfolio standard.

(B) The electrical corporation will create or maintain a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity-related and demand reduction products.

(C) The electrical corporation will first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.

(10) The electrical corporation's risk management policy, strategy, and practices, including specific measures of price stability.

(11) A plan to achieve appropriate increases in diversity of ownership and diversity of fuel supply of nonutility electrical generation.

(12) A mechanism for recovery of reasonable administrative costs related to procurement in the generation component of rates.

(c) The commission shall review and accept, modify, or reject each electrical corporation's procurement plan. The commission's review shall consider each electrical corporation's individual procurement situation, and shall give strong consideration to that situation in determining which one or more of the features set forth in this subdivision shall apply to that electrical corporation. A procurement plan approved by the commission shall contain one or more of the following features, provided that the commission may not approve a feature or mechanism for an electrical corporation if it finds that the feature or mechanism would impair the restoration of an electrical corporation's creditworthiness or

1 would lead to a deterioration of an electrical corporation's  
2 creditworthiness:

3 (1) A competitive procurement process under which the  
4 electrical corporation may request bids for procurement-related  
5 services. The commission shall specify the format of that  
6 procurement process, as well as criteria to ensure that the auction  
7 process is open and adequately subscribed. Any purchases made  
8 in compliance with the commission-authorized process shall be  
9 recovered in the generation component of rates.

10 (2) An incentive mechanism that establishes a procurement  
11 benchmark or benchmarks and authorizes the electrical corporation  
12 to procure from the market, subject to comparing the electrical  
13 corporation's performance to the commission-authorized  
14 benchmark or benchmarks. The incentive mechanism shall be  
15 clear, achievable, and contain quantifiable objectives and standards.  
16 The incentive mechanism shall contain balanced risk and reward  
17 incentives that limit the risk and reward of an electrical corporation.

18 (3) Upfront achievable standards and criteria by which the  
19 acceptability and eligibility for rate recovery of a proposed  
20 procurement transaction will be known by the electrical corporation  
21 prior to the execution of the bilateral contract for the transaction.  
22 The commission shall provide for expedited review and either  
23 approve or reject the individual contracts submitted by the electrical  
24 corporation to ensure compliance with its procurement plan. To  
25 the extent the commission rejects a proposed contract pursuant to  
26 this criteria, the commission shall designate alternative procurement  
27 choices obtained in the procurement plan that will be recoverable  
28 for ratemaking purposes.

29 (d) A procurement plan approved by the commission shall  
30 accomplish each of the following objectives:

31 (1) Enable the electrical corporation to fulfill its obligation to  
32 serve its customers at just and reasonable rates.

33 (2) Eliminate the need for after-the-fact reasonableness reviews  
34 of an electrical corporation's actions in compliance with an  
35 approved procurement plan, including resulting electricity  
36 procurement contracts, practices, and related expenses. However,  
37 the commission may establish a regulatory process to verify and  
38 assure that each contract was administered in accordance with the  
39 terms of the contract, and contract disputes which may arise are  
40 reasonably resolved.

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5 percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

(4) Moderate the price risk associated with serving its retail customers, including the price risk embedded in its long-term supply contracts, by authorizing an electrical corporation to enter into financial and other electricity-related product contracts.

(5) Provide for just and reasonable rates, with an appropriate balancing of price stability and price level in the electrical corporation's procurement plan.

(e) The commission shall provide for the periodic review and prospective modification of an electrical corporation's procurement plan.

(f) The commission may engage an independent consultant or advisory service to evaluate risk management and strategy. The reasonable costs of any consultant or advisory service is a reimbursable expense and eligible for funding pursuant to Section 631.

(g) The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted

1 in an electrical corporation's proposed procurement plan or  
2 resulting from or related to its approved procurement plan,  
3 including, but not limited to, proposed or executed power purchase  
4 agreements, data request responses, or consultant reports, or any  
5 combination, provided that the Office of Ratepayer Advocates and  
6 other consumer groups that are nonmarket participants shall be  
7 provided access to this information under confidentiality  
8 procedures authorized by the commission.

9 (h) Nothing in this section alters, modifies, or amends the  
10 commission's oversight of affiliate transactions under its rules and  
11 decisions or the commission's existing authority to investigate and  
12 penalize an electrical corporation's alleged fraudulent activities,  
13 or to disallow costs incurred as a result of gross incompetence,  
14 fraud, abuse, or similar grounds. Nothing in this section expands,  
15 modifies, or limits the State Energy Resources Conservation and  
16 Development Commission's existing authority and responsibilities  
17 as set forth in Sections 25216, 25216.5, and 25323 of the Public  
18 Resources Code.

19 (i) An electrical corporation that serves less than 500,000 electric  
20 retail customers within the state may file with the commission a  
21 request for exemption from this section, which the commission  
22 shall grant upon a showing of good cause.

23 (j) (1) Prior to its approval pursuant to Section 851 of any  
24 divestiture of generation assets owned by an electrical corporation  
25 on or after the date of enactment of the act adding this section, the  
26 commission shall determine the impact of the proposed divestiture  
27 on the electrical corporation's procurement rates and shall approve  
28 a divestiture only to the extent it finds, taking into account the  
29 effect of the divestiture on procurement rates, that the divestiture  
30 is in the public interest and will result in net ratepayer benefits.

31 (2) Any electrical corporation's procurement necessitated as a  
32 result of the divestiture of generation assets on or after the effective  
33 date of the act adding this subdivision shall be subject to the  
34 mechanisms and procedures set forth in this section only if its  
35 actual cost is less than the recent historical cost of the divested  
36 generation assets.

37 (3) Notwithstanding paragraph (2), the commission may deem  
38 proposed procurement eligible to use the procedures in this section  
39 upon its approval of asset divestiture pursuant to Section 851.

SEC. 5. Section 454.55 of the Public Utilities Code is amended and renumbered to read:

~~454.55.~~

636. The commission, in consultation with the State Energy Resources Conservation and Development Commission, shall identify all potentially achievable cost-effective electricity efficiency savings and establish efficiency targets for an electrical corporation to achieve pursuant to Section ~~454.5~~ 635.

SEC. 6. Section 454.56 of the Public Utilities Code is amended and renumbered to read:

~~454.56.~~

637. (a) The commission, in consultation with the State Energy Resources Conservation and Development Commission, shall identify all potentially achievable cost-effective natural gas efficiency savings and establish efficiency targets for the gas corporation to achieve.

(b) A gas corporation shall first meet its unmet resource needs through all available natural gas efficiency and demand reduction resources that are cost effective, reliable, and feasible.

SEC. 7. Section 454.6 of the Public Utilities Code is amended to read:

454.6. (a) A contract entered into pursuant to Section ~~454.5~~ 635 by an electrical corporation for the electricity generated by a replacement or repowering project that meets the criteria specified in subdivision (b) shall be recoverable in rates, taking into account any collateral requirements and debt equivalence associated with the contract, in a manner determined by the commission to provide the best value to ratepayers.

(b) To be eligible for rate treatment in accordance with subdivision (a), a contract shall be for a project which meets all of the following criteria:

(1) The project is a replacement or repowering of an existing generation unit of a thermal powerplant.

(2) The project complies with all applicable requirements of federal, state, and local laws.

(3) The project will not require significant additional rights-of-way for electrical or fuel-related transmission facilities.

(4) The project will result in significant and substantial increases in the efficiency of the production of electricity.

1 (5) The Independent System Operator or local system operator  
2 certifies that the project is needed for local area reliability.

3 (6) The project provides electricity to consumers of this state  
4 at the cost of generating that electricity, including a reasonable  
5 return on the investment and the costs of financing the project.

6 SEC. 8. Section 635 of the Public Utilities Code is amended  
7 and renumbered to read:

8 ~~635.~~

9 638. In a long-term plan adopted by an electrical corporation  
10 or in a procurement plan implemented by a local publicly owned  
11 electric utility, the electrical corporation or local publicly owned  
12 electric utility shall adopt a strategy applicable both to newly  
13 constructed or repowered generation owned and procured by the  
14 electrical corporation or local publicly owned electric utility to  
15 achieve efficiency in the use of fossil fuels and to address carbon  
16 emissions.

17 SEC. 9. Section 2842 of the Public Utilities Code is amended  
18 to read:

19 2842. The commission, in approving a procurement plan for  
20 an electrical corporation pursuant to ~~Section 454.5~~ *Article 9*  
21 *(commencing with Section 635) of Chapter 3 of Part 1*, shall require  
22 that the electrical corporation's procurement plan incorporate  
23 combined heat and power solutions to the extent that it is cost  
24 effective compared to other competing forms of wholesale  
25 generation, technologically feasible, and environmentally  
26 beneficial, particularly as it pertains to reducing emissions of  
27 carbon dioxide and other greenhouse gases.

28 SEC. 10. Section 8341 of the Public Utilities Code is amended  
29 to read:

30 8341. (a) No load-serving entity or local publicly owned  
31 electric utility may enter into a long-term financial commitment  
32 unless any baseload generation supplied under the long-term  
33 financial commitment complies with the greenhouse gases emission  
34 performance standard established by the commission, pursuant to  
35 subdivision (d), for a load-serving entity, or by the Energy  
36 Commission, pursuant to subdivision (e), for a local publicly owned  
37 electric utility.

38 (b) (1) The commission shall not approve a long-term financial  
39 commitment by an electrical corporation unless any baseload  
40 generation supplied under the long-term financial commitment

1 complies with the greenhouse gases emission performance standard  
2 established by the commission pursuant to subdivision (d).

3 (2) The commission may, in order to enforce this section, review  
4 any long-term financial commitment proposed to be entered into  
5 by an electric service provider or a community choice aggregator.

6 (3) The commission shall adopt rules to enforce the requirements  
7 of this section, for load-serving entities. The commission shall  
8 adopt procedures, for all load-serving entities, to verify the  
9 emissions of greenhouse gases from any baseload generation  
10 supplied under a contract subject to the greenhouse gases emission  
11 performance standard to ensure compliance with the standard.

12 (4) In determining whether a long-term financial commitment  
13 is for baseload generation, the commission shall consider the design  
14 of the powerplant and the intended use of the powerplant, as  
15 determined by the commission based upon the electricity purchase  
16 contract, any certification received from the Energy Commission,  
17 any other permit or certificate necessary for the operation of the  
18 powerplant, including a certificate of public convenience and  
19 necessity, any procurement approval decision for the load-serving  
20 entity, and any other matter the commission determines is relevant  
21 under the circumstances.

22 (5) Costs incurred by an electrical corporation to comply with  
23 this section, including those costs incurred for electricity purchase  
24 agreements that are approved by the commission that comply with  
25 the greenhouse gases emission performance standard, are to be  
26 treated as procurement costs incurred pursuant to an approved  
27 procurement plan and the commission shall ensure timely cost  
28 recovery of those costs pursuant to paragraph (3) of subdivision  
29 (d) of Section ~~454.5~~ 635.

30 (6) A long-term financial commitment entered into through a  
31 contract approved by the commission, for electricity generated by  
32 a zero- or low-carbon generating resource that is contracted for,  
33 on behalf of consumers of this state on a cost-of-service basis,  
34 shall be recoverable in rates, in a manner determined by the  
35 commission consistent with Section 380. The commission may,  
36 after a hearing, approve an increase from one-half to 1 percent in  
37 the return on investment by the third party entering into the contract  
38 with an electrical corporation with respect to investment in zero-  
39 or low-carbon generation resources authorized pursuant to this  
40 subdivision.

1 (c) (1) The Energy Commission shall adopt regulations for the  
2 enforcement of this chapter with respect to a local publicly owned  
3 electric utility.

4 (2) The Energy Commission may, in order to ensure compliance  
5 with the greenhouse gases emission performance standard by local  
6 publicly owned electric utilities, apply the procedures adopted by  
7 the commission to verify the emissions of greenhouse gases from  
8 baseload generation pursuant to subdivision (b).

9 (3) In determining whether a long-term financial commitment  
10 is for baseload generation, the Energy Commission shall consider  
11 the design of the powerplant and the intended use of the  
12 powerplant, as determined by the Energy Commission based upon  
13 the electricity purchase contract, any certification received from  
14 the Energy Commission, any other permit for the operation of the  
15 powerplant, any procurement approval decision for the load-serving  
16 entity, and any other matter the Energy Commission determines  
17 is relevant under the circumstances.

18 (d) (1) On or before February 1, 2007, the commission, through  
19 a rulemaking proceeding, and in consultation with the Energy  
20 Commission and the State Air Resources Board, shall establish a  
21 greenhouse gases emission performance standard for all baseload  
22 generation of load-serving entities, at a rate of emissions of  
23 greenhouse gases that is no higher than the rate of emissions of  
24 greenhouse gases for combined-cycle natural gas baseload  
25 generation. Enforcement of the greenhouse gases emission  
26 performance standard shall begin immediately upon the  
27 establishment of the standard. All combined-cycle natural gas  
28 powerplants that are in operation, or that have an Energy  
29 Commission final permit decision to operate as of June 30, 2007,  
30 shall be deemed to be in compliance with the greenhouse gases  
31 emission performance standard.

32 (2) In determining the rate of emissions of greenhouse gases  
33 for baseload generation, the commission shall include the net  
34 emissions resulting from the production of electricity by the  
35 baseload generation.

36 (3) The commission shall establish an output-based methodology  
37 to ensure that the calculation of emissions of greenhouse gases for  
38 cogeneration recognizes the total usable energy output of the  
39 process, and includes all greenhouse gases emitted by the facility  
40 in the production of both electrical and thermal energy.

1 (4) In calculating the emissions of greenhouse gases by facilities  
2 generating electricity from biomass, biogas, or landfill gas energy,  
3 the commission shall consider net emissions from the process of  
4 growing, processing, and generating the electricity from the fuel  
5 source.

6 (5) Carbon dioxide that is injected in geological formations, so  
7 as to prevent releases into the atmosphere, in compliance with  
8 applicable laws and regulations shall not be counted as emissions  
9 of the powerplant in determining compliance with the greenhouse  
10 gases emissions performance standard.

11 (6) In adopting and implementing the greenhouse gases emission  
12 performance standard, the commission, in consultation with the  
13 Independent System Operator shall consider the effects of the  
14 standard on system reliability and overall costs to electricity  
15 customers.

16 (7) In developing and implementing the greenhouse gases  
17 emission performance standard, the commission shall address  
18 long-term purchases of electricity from unspecified sources in a  
19 manner consistent with this chapter.

20 (8) In developing and implementing the greenhouse gases  
21 emission performance standard, the commission shall consider  
22 and act in a manner consistent with any rules adopted pursuant to  
23 Section 824a-3 of Title 16 of the United States Code.

24 (9) An electrical corporation that provides electric service to  
25 75,000 or fewer retail end-use customers in California may file  
26 with the commission a proposal for alternative compliance with  
27 this section, which the commission may accept upon a showing  
28 by the electrical corporation of both of the following:

29 (A) A majority of the electrical corporation's retail end-use  
30 customers for electric service are located outside of California.

31 (B) The emissions of greenhouse gases to generate electricity  
32 for the retail end-use customers of the electrical corporation are  
33 subject to a review by the utility regulatory commission of at least  
34 one other state in which the electrical corporation provides  
35 regulated retail electric service.

36 (e) (1) On or before June 30, 2007, the Energy Commission,  
37 at a duly noticed public hearing and in consultation with the  
38 commission and the State Air Resources Board, shall establish a  
39 greenhouse gases emission performance standard for all baseload  
40 generation of local publicly owned electric utilities at a rate of

1 emissions of greenhouse gases that is no higher than the rate of  
2 emissions of greenhouse gases for combined-cycle natural gas  
3 baseload generation. The greenhouse gases emission performance  
4 standard established by the Energy Commission for local publicly  
5 owned electric utilities shall be consistent with the standard adopted  
6 by the commission for load-serving entities. Enforcement of the  
7 greenhouse gases emission performance standard shall begin  
8 immediately upon the establishment of the standard. All  
9 combined-cycle natural gas powerplants that are in operation, or  
10 that have an Energy Commission final permit decision to operate  
11 as of June 30, 2007, shall be deemed to be in compliance with the  
12 greenhouse gases emission performance standard.

13 (2) The greenhouse gases emission performance standard shall  
14 be adopted by regulation pursuant to the Administrative Procedure  
15 Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
16 Division 3 of Title 2 of the Government Code).

17 (3) In determining the rate of emissions of greenhouse gases  
18 for baseload generation, the Energy Commission shall include the  
19 net emissions resulting from the production of electricity by the  
20 baseload generation.

21 (4) The Energy Commission shall establish an output-based  
22 methodology to ensure that the calculation of emissions of  
23 greenhouse gases for cogeneration recognizes the total usable  
24 energy output of the process, and includes all greenhouse gases  
25 emitted by the facility in the production of both electrical and  
26 thermal energy.

27 (5) In calculating the emissions of greenhouse gases by facilities  
28 generating electricity from biomass, biogas, or landfill gas energy,  
29 the Energy Commission shall consider net emissions from the  
30 process of growing, processing, and generating the electricity from  
31 the fuel source.

32 (6) Carbon dioxide that is captured from the emissions of a  
33 powerplant and that is permanently disposed of in geological  
34 formations in compliance with applicable laws and regulations,  
35 shall not be counted as emissions from the powerplant.

36 (7) In adopting and implementing the greenhouse gases emission  
37 performance standard, the Energy Commission, in consultation  
38 with the Independent System Operator, shall consider the effects  
39 of the standard on system reliability and overall costs to electricity  
40 customers.

1 (8) In developing and implementing the greenhouse gases  
2 emission performance standard, the Energy Commission shall  
3 address long-term purchases of electricity from unspecified sources  
4 in a manner consistent with this chapter.

5 (9) In developing and implementing the greenhouse gases  
6 emission performance standard, the Energy Commission shall  
7 consider and act in a manner consistent with any rules adopted  
8 pursuant to Section 824a-3 of Title 16 of the United States Code.

9 (f) The Energy Commission, in a duly noticed public hearing  
10 and in consultation with the commission and the State Air  
11 Resources Board, shall reevaluate and continue, modify, or replace  
12 the greenhouse gases emission performance standard when an  
13 enforceable greenhouse gases emissions limit is established and  
14 in operation, that is applicable to local publicly owned electric  
15 utilities.

16 (g) The commission, through a rulemaking proceeding and in  
17 consultation with the Energy Commission and the State Air  
18 Resources Board, shall reevaluate and continue, modify, or replace  
19 the greenhouse gases emission performance standard when an  
20 enforceable greenhouse gases emissions limit is established and  
21 in operation, that is applicable to load-serving entities.

22 SEC. 11. No reimbursement is required by this act pursuant to  
23 Section 6 of Article XIII B of the California Constitution because  
24 the only costs that may be incurred by a local agency or school  
25 district will be incurred because this act creates a new crime or  
26 infraction, eliminates a crime or infraction, or changes the penalty  
27 for a crime or infraction, within the meaning of Section 17556 of  
28 the Government Code, or changes the definition of a crime within  
29 the meaning of Section 6 of Article XIII B of the California  
30 Constitution.